

# The Gazette of India

## EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 166] NEW DELHI, FRIDAY, DECEMBER 12, 1952

### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 12th December, 1952*

**S.R.O. 2046.**—In exercise of the powers conferred by the proviso to sub-rule (2) of rule 10 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, the Election Commission hereby extends up to the 22nd December, 1952, the period within which claims and objections under sub-rule (1) of the said rule are to be made under sub-rule (2) of that rule in respect of that part of the electoral roll for the Pataliputra Parliamentary constituency which comprises Patna City East and Patna City West *cum* Naubatpur Assembly constituencies of the Bihar Legislative Assembly.

[No. 4/2/52-Elec.I(1).]

**S.R.O. 2047.**—In exercise of the powers conferred by the proviso to sub-rule (2) of rule 10 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, the Election Commission hereby extends upto the 22nd December, 1952, the period within which claims and objections under sub-rule (1) of the said rule are to be made under sub-rule (2) of that rule in respect of the electoral rolls for Patna City East and Patna City West *cum* Naubatpur Assembly constituencies of the Bihar Legislative Assembly.

[No. 4/2/52-Elec.I(2).]

**S.R.O. 2048.**—WHEREAS the election of Shri O. Chengam Pillai of Valur Cheri, Minjur Firka, Ponneri Taluk, District Chingleput and Shri Gajapathy Reddy of Obulapuram Village, Gummudipundi Firka, Ponneri Taluk, District Chingleput as members of the Legislative Assembly of Madras, from the Ponneri constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLII of 1951), by Shri M. C. Lakshmana Pillai of Kutcheri Road, Ponneri, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, MADRAS

*Wednesday the 3rd day of December, 1952*

President:—Sri K. B. Venkatachala Ayyar	...	...	Chairman
Sri Syed Imamuddin	...	...	} Members.
and Sri K. Chandrasekharan	...	...	

## ELECTION PETITION No. 49/1952

Sri M. C. Lakshmana Pillai	...	Petitioner.
<i>Vs.</i>		
1. Sri O. Chengam Pillai	...	Respondents.
2. Sri Gajapathy Reddy	...	
3. Sri Manavalan	...	
4. Sri P. B. Jeevarathnam	...	
5. Sri M. Venkatakrishna Sharma	...	
6. Sri M. Bakthavatsalam	...	
7. Sri Nataraja Mudaliar	...	
8. Sri Marimuthu Reddi	...	

This petition coming on for hearing on the 27th and 28th days of November, 1952, in the presence of Mr. R. Sundaralingam, Advocate for the petitioner, and Mr. Mohan Kumaramangalam, Advocate for Respondents 1 and 2, Respondents 3 to 8 remaining *ex parte* and upon reading the petition and the statements of Respondents filed herein, upon hearing the arguments on both sides and the petition having stood over till this day for orders, the Tribunal delivered the following order:—

*Issues*

1. Whether the petition is not maintainable for non-joinder of all the duly nominated candidates?
2. Whether the nomination of the 1st Respondent did not conform to the provisions of Rule 33(3) of the Act XLIII of 1951 and is invalid?
2. Whether the corrupt practices alleged are true?
4. Whether the allegations in paragraph 14 of the petition are true and if so were the provisions of Rule 21(5) of the Rules for the Conduct of Elections contravened?
5. Whether the result of the election was materially affected by all or any of the corrupt practices alleged and contravention of Rule 21(5)?
6. What relief if any is petitioner entitled?
7. What order as to costs?

**ORDER**

*Issue 2.*—The petitioner Sri M. C. Lakshmana Pillai was one of the candidates for the election of two members to the Madras Legislative Assembly from the Ponneri Constituency. The petitioner was defeated and respondents 1 and 2 were the successful candidates. He has, therefore, filed this petition praying for a declaration that the election is void.

2. Allegations of corrupt and illegal practices and contravention of the rules relating to the conduct of elections have been made in the petition and on these allegations issues 3 to 5 were framed. But at the trial the petitioner's learned Advocate stated that he did not propose to adduce evidence on these issues. They do not, therefore, require consideration.

3. Issue 1 was tried as a preliminary issue and in accordance with our order on the said issue respondents 7 and 8 were added as parties.

4. The only question that remains for consideration is the one covered by issue 2 which relates to the validity of the nomination of the first respondent.

5. The Ponneri Constituency of the Madras Legislative Assembly is a double member constituency in which a seat is reserved for the Scheduled Castes. The petitioner and respondents 1, 3 and 4 were the candidates who stood for election to the reserved seat. The first respondent filed 8 nomination papers of which five were accepted while three were rejected. All the accepted nomination papers are alike, the entries in the columns being identical. Column 6 of the printed nomination form relates to the details to be furnished in the case of the Scheduled Castes or Scheduled Tribes. In this column in all the accepted nomination papers the first respondent described himself as a Harijan. They contain declarations in the prescribed form signed by the first respondent and verified by a magistrate. In this declaration also he described himself as a Harijan.

6. The objection raised by the petitioner to the validity of the first respondent's nomination is that this description Harijan does not satisfy the requirements of the proviso to section 33(3) of the Representation of the People Act (XLIII of 1951),

and that it was improperly accepted by the Returning Officer. The proviso is as follows:—

“Provided that in a constituency where any seat is reserved for the Scheduled Castes or for the Scheduled Tribes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the Scheduled Castes or of the Scheduled Tribes for which the seat has been so reserved and the declaration specifies the particular caste or tribe of which the candidate is a member and also the area in relation to which such caste or tribe is one of the Scheduled Castes or Scheduled Tribes, as the case may be.”

In support of this contention reference was also made to the Scheduled Castes Order 1950 in which Harijan is not included as one of the Scheduled Castes in Madras State. The question that arises for decision is whether the description of the first respondent as Harijan in the nomination paper is such a defect as to invalidate the nomination.

7. The nomination papers clearly show that the first respondent stood as a candidate for election to the seat reserved for Scheduled Castes and he made a deposit of only Rs. 125 which is the amount to be deposited by members of the Scheduled Castes under the proviso (a) to section 34 of the Representation of the People Act (XLIII of 1951). It is conceded that the first respondent is an Adi Dravida which is one of the Scheduled Castes mentioned in the Order, and in fact the petitioner himself has so described him in his petition. He is, therefore, qualified to stand for election to the reserved seat is a fact which is not and could not be disputed. The term “Harijan” is a very well known term and is widely used at least in this State and finds a place even in Statutory enactments such as the Removal of Civil Disabilities Act (Madras Act XXI of 1938). It is not suggested that the Returning Officer or anybody else was misled by the use of this nomenclature.

8. In the case of a candidate contesting a seat reserved for Scheduled Castes, a declaration verified in the prescribed manner is a matter affecting his qualification because under the proviso to section 33(3) “no candidate shall be deemed to be qualified to be chosen to fill that seat unless the nomination paper” is accompanied by such a declaration. Except in regard to the use of the description ‘Harijan’ the accepted nomination papers of the first respondent satisfy the requirements of the Proviso to section 33(3). The accepted nomination papers contain such declarations verified in the prescribed manner. There can be no question that it did not specify the area in relation to which the caste is one of the Scheduled Castes because all the castes mentioned in the Order are Scheduled Castes for the whole of the Madras State.

9. As observed in the Bhatalla Shik Rural Constituency Case (Doabia’s Indian Election Cases, 1935—Volume II, page 263) “the details to be filled in the nomination paper are intended to ensure either the identity or the eligibility of the candidate, proposer or the seconder”.

10. The present case stands in a better footing than the Anglo-Indian Constituency case reported in Sen and Poddar Indian Election Cases at page 61. In that case a candidate who stood for election for an Anglo-Indian Constituency omitted to mention his denomination in the nomination paper. But still it was held that the nomination was valid.

11. In the accepted nomination papers filed by the first respondent there is a substantial compliance with the provisions of the Act. The description Harijan instead of Adi Dravida is a matter of detail and does not affect the substance. When a man calls himself a Harijan there could be no mistake as to what he means, namely that he belongs to the Scheduled Caste. This error in the description of the particular caste to which he belongs is not in our opinion of such a substantial nature as to invalidate his nomination. At any rate, it is a technical defect which is not of a substantial character within the meaning of section 36(4) and the Returning Officer was justified in overlooking it. We, therefore, find on this issue that the nomination of the first respondent is not invalid.

12. *Issue 1.*—This issue, which was argued as a preliminary issue was dealt with in our Order dated 15th November 1952 which is as follows:—

“This issue was argued as a preliminary issue as it relates to the maintainability of the election petition. Besides the petitioner and respondents 1 to 6 there were two other candidates Sri Natraja Mudalliar and Sri Marimuthu Reddi, who had filed their nomination papers which after scrutiny were accepted. But later on they withdrew their candidatures. The objection to the maintainability of the

petition is based on the fact that these two persons have not been made parties to this petition. It is argued by the learned Counsel for respondents 1 and 2 that these persons are candidates who were duly nominated at the election within the meaning of section 82 of the Representation of the People Act 1951 (Act XLIII of 1951)—(hereinafter referred to as the Act) and that they ought to have been joined as parties to the petition.

2. The expression "duly nominated" and "validly nominated" are used in several places in the Act. For the petitioner it is argued that these expressions have the same meaning and interchangeable. The contention on the other side is that "validly nominated candidates" are only those whose names are published under section 38, after scrutiny of nominations and withdrawals, if any, while the expression "duly nominated candidates" denotes all candidates whose nominations were accepted and includes also those who subsequently withdrew their candidatures.

3. At first sight, it would seem unreasonable to insist on persons who had withdrawn their candidatures to be made parties to an election petition. The matter, however, is not so very simple with the provisions of the Act are examined carefully. The expression "duly nominated" occurs in section 36(3), 52, 53, 54(6), 82 and the proviso to sub-section (4) of section 158. These sections may be contrasted with section 38 under which the Returning Officer after the expiry of the period within which candidatures may be withdrawn is enjoined to "prepare and publish a list of valid nominations". Section 54(6) provides a clue to the determination of the significance of these two terms and it runs as follows:—

"In this section, reference to candidates shall be construed as references to candidates who were duly nominated and who have not withdrawn their candidatures in the manner and within the time specified in sub-section (1) of section 37." Read along with section 38 the inference seems to be clear that validly nominated candidates are only those whose names are published under section 38, while the term "duly nominated candidates" is more comprehensive and includes at least all those whose nominations were accepted, though some of them might subsequently have withdrawn. All validly nominated candidates are also duly nominated but conversely it cannot be said that all duly nominated candidates are also validly nominated. Rule 2(f) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 defines a "validly nominated candidate" as "a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) of section 39 as the case may be". We are not referring to this definition in the rules as governing the interpretation of the Act but at the same time it is instructive, and we are inclined to think that it gives the correct significance of the term as used in the Act;

4. We are, therefore, of opinion, that the two candidates who withdrew their candidatures after scrutiny of nominations, have to be joined as parties to the election petition. In order to meet this objection, the petitioner has also filled an application to add these two persons as parties and since we are allowing it, the question of non-maintainability of the petition does not arise."

13. *Issues 6 and 7.*—In the result the petition is dismissed. The petitioner will pay the costs of respondents 1 and 2 which we fix at Rs. 500\*\*. As the other respondents were unrepresented, there will be no order as regards their costs. Interest at 3 per cent. is allowed on costs from this date.

Dictated to the Shorthand writer and pronounced in Open Court this the 3rd day of December 1952.

(Sd.) K. B. VENKATACHALA AYYAR.

(Sd.) SYED IMAMUDDIN.

(Sd.) K. CHANDRASEKHARAN.

\*\*Amended as per order dated 5th December 1952 in Interlocutory Application No. 2/1952 in Election Petition No. 49/1952.

(Sd.) K. B. VENKATACHALA AYYAR.

(Sd.) SYED IMAMUDDIN.

(Sd.) K. CHANDRASEKHARAN.

[No. 19/49/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty